No. ~~1762~~

70-219

Supreme Court, U.S.
FILED
MAY 28 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

ROBERT GEORGE MUNCASTER, PETITIONER

VS.

UNITED STATES OF AMERICA, RESPONDENT,

PETITION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE UNITED STATES To The United States Court of Appeals for the Fifth Circuit, Etc. and The United States District Court for the Middle District of Alabama, Etc.

ROBERT GEORGE MUNCASTER
Petitioner - Attorney for Himself
1158 SOUTH PERRY STREET
MONTGOMERY, ALABAMA 36104

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

ROBERT GEORGE MUNCASTER, PETITIONER

vs.

UNITED STATES OF AMERICA:
U.S. Court of Appeals, Fifth Circuit,
Clerk of the Court, U.S. Court of Appeals, Fifth Circuit,
John R. Brown, Chief Judge of the U.S. Court of Appeals, Fifth Circuit; and,
U.S. District Court for the Middle District of Alabama,
Clerk of the Court, U.S. District Court for the Middle District of Alabama,
Frank M. Johnson, Jr. Judge of the U.S. District Court for the Middle District of Alabama, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE UNITED STATES To The United States Court of Appeals for the Fifth Circuit, Etc. and The United States District Court for the Middle District of Alabama, Etc.

TO: The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States of America.

Your Petitioner Robert George Muncaster respectfully represents and shows this Court as follows:

I
OFFICIAL REPORTS

The Clerk of the Court, U. S. Court of Appeals, Fifth Circuit, on April 30, 1971, entered an Order - ENTRY OF DISMISSAL - to the U. S. District Court for the Middle District of Alabama dismissing your Petitioner's Appeal for alleged violations of the "Military Selective Service Act of 1967".

This ENTRY OF DISMISSAL affirming the Actions of the U. S. District Court for the Middle District of Alabama appeared to be based upon a conditional ORDER of this said Court of Appeals, sealed and signed and dated April 1, 1971.

On May 14, 1971, the said Court of Appeals denied relief asked by your Petitioner in his MOTION to vacate the Dismissal. This MOTION was dated May 3, 1971.

A copy of the two ORDERS, ENTRY OF DISMISSAL and MOTION are included and attached hereto and made a part of this PETITION. See Appendix.

II
JURISDICTION OF THE COURT

The grounds upon which the jurisdiction of the Supreme Court of the United States is invoked are as follows:

That this is an appeal from the Order - ENTRY OF DISMISSAL - dismissing your Petitioner's Appeal from the said U.S. Court of Appeals which final Order was entered on April 30, 1971.

Also sought to be reviewed are the ORDER leading up to this ENTRY OF DISMISSAL as well as the ORDER refusing to reinstate Petitioner's Appeal.

Jurdisdiction is conferred upon the Supreme Court of the United States by Article III., U.S. Constitution; 28 U.S.C. 1651 and 1254; Article VI. and Article I., Section 8, U.S. Constitution; and the common law.

III.
QUESTION PRESENTED FOR REVIEW

Can a U.S. Circuit Court of Appeals arbitrarily dismiss an Appeal while the Appeal is pending during the attempt of the Appellant to have an intermediate ORDER reviewed by a writ of Mandamus in the U.S. Supreme Court?

IV.
CONSTITUTIONAL PROVISIONS INVOLVED

Due Process of Law:

Amendment V:

> No person shall . . . be deprived of life, liberty, or property, without Due Process of Law, . . .

Right to Appeal:

Amendment I:

> Congress shall make no law respecting . . . the right of the people . . . to Petition the government for a Redress of Grievances.

Article III., Section 2, para. 2:

> . . . In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, . . .

V.
STATEMENT OF THE CASE

(1) Your Petitioner was Tried and Convicted May 14, 1970, for alleged violations of the "Military Selective Service Act of 1967".

(2) Petitioner appealed the Judgment and Conviction to the U. S. Court of Appeals, Fifth Circuit on May 22, 1970. Appeal was officially Docketed July 20, 1970. (see copy of Docket in Appendix)

(3) Appellant-Petitioner's Printed Appendix was filed August 31, 1970, with the said Court of Appeals.

(4) Petitioner's Appeals Counsel withdrew from the Case on September 1, 1970. Petitioner proceeded as his own Counsel.

(5) On October 12, 1970, your Petitioner by a PETITION for writ of Mandamus asked the Court for Documents necessary for his defense in order to perfect his Appeals Brief. These Documents had been denied to your Petitioner without a hearing prior to his Jury Trial.

(6) On January 5, 1971, your Petitioner by a PETITION for writ of Mandamus asked the Court for the legal citation on which the Respondent U.S. District Court Judge had founded part of his Judgment and sentencing. These Citations were necessary so your Petitioner could prepare his Appeals Brief.

(7) On January 8, 1971, the U. S. Attorney for the Middle District of Alabama entered a MOTION TO DISMISS your Petitioner's Appeal. Your Peti-

tioner was served no copy of this MOTION by the U. S. Attorney (although he certified he had) nor notified by the Clerk of the said Court of Appeals that it had been Docketed and set for hearing on January 19, 1971. Your Petitioner found out about this Action only accidentally and indirectly. This Hearing set for January 19th was postponed without Notice to Petitioner and, at no time was Petitioner advised of the date when the MOTION would be heard.

(8) As late as January 19, 1971, the date that the said Hearing was first set on the Government MOTION TO DISMISS, none of the Appellant's PETITIONS or other requests and demands for information or extensions of time had even been entered on the Docket in Appellant's File. This was the case in spite of the fact that your Petitioner had repeatedly asked the Clerk of said Court to inform him of the disposition of the PETITIONS, since the information requested in them was necessary for the preparation of your Petitioner's Brief.

(9) Immediately after a fire of undetermined origin broke out in the said Clerk's Office early January 21, 1971, your Petitioner was requested to produce new copies of these PETITIONS "by order of the Court". When your Petitioner requested a copy of these "Orders" of the Court, the Clerk informed him that there was no need to send any copies. This was some time after your Petitioner had already sent the copies requested of him.

(10) All correspondence by your Petitioner to the Clerk of the said Court of Appeals regarding the condition of his records, etc. after the fire

and, regarding his previous requests for information failed to bring a reply in spite of your Petitioner's insistance that the full record be made available to the said Court of Appeals for its consideration.

(11) On Saturday, April 3, 1971, your Petitioner received an official ORDER of the Court of Appeals which was sealed and signed by the Clerk in accordance with 28 U. S. C. 1691 and dated April 1, 1971. It was in this ORDER that the U. S. Attorney's MOTION TO DISMISS was denied and your Petitioner's two PETITIONS were denied - thus denying your Petitioner the information which he had demanded in his own defense. This ORDER also informed your Petitioner that he had only 30 days in which to file his Brief - with or without the Documents.

IT IS THIS COURT ORDER denying your Petitioner the information necessary for his defense - without a hearing on the merits - as well as denying your Petitioner adequate time to finish his Appeals Brief after receipt of the necessary information WHICH IS IN CONTEST.

(12) On Thursday, April 29, 1971, less than 30 days from the issuance of the said ORDER on April 1, 1971, your Petitioner mailed to this Supreme Court 40 copies of a PETITION for Writ of Mandamus requesting relief in this Court by its granting to your Petitioner the Documents which he had attempted to obtain previously in the said Court of Appeals in his PETITIONS of October 12, 1970, and January 5, 1971, and which were denied in the said ORDER above. A copy was served upon the Clerk of the U. S. Court of Appeals Fifth Circuit, as well as the three Circuit Judges who had issued the said ORDER. This Supreme

Court PETITION included an extension of time request for the said Court of Appeals. On the following day, your Petitioner informed the said Court of Appeals Clerk again by letter of his action and requested an Extension of Time in which this PETITION could be heard by this Honorable Court.

(13) On that same Friday, April 30, 1971, Clerk Wadsworth of the said Court of Appeals issued an ENTRY OF DISMISSAL to the U.S. District Court for the Middle District of Alabama dismissing your Petitioner's Appeal. (see Appendix)

(14) On receipt by mail of this Action of the Clerk, your Petitioner immediately submitted a MOTION AND NOTICE OF MOTION dated May 3, 1971, requesting that the Court of Appeals vacate this ENTRY OF DISMISSAL thereby reinstating Petitioner's Appeal. (see Appendix for full request in this MOTION)

Your Petitioner has been informed by the Solicitor General that he is in receipt of his PETITION and, the Clerk of the Supreme Court has advised your Petitioner that this said PETITION was Docketed May 3, 1971, as No. 1667, October Term 1970.

(15) On Tuesday morning, May 18, 1971, your Petitioner received an ORDER dated May 14, 1971, from the said Court of Appeals in which his MOTION to vacate the ENTRY OF DISMISSAL was DENIED.

VI.
ARGUMENT

(a) Your Petitioner repeatedly sought from the said Court of Appeals information which was

necessary in his defense and for his Appeals Brief.

In the case of the one PETITION, your Petitioner had waited for over 5 months for the said Court of Appeals to act. In the other case, your Petitioner had waited over 2 months for the Appeals Court to act. When this said Court of Appeals denied these PETITIONS and in the same ORDER dated April 1, 1971 demanded that your Petitioner file his Brief within a 30 day period without granting him the necessary information and without permitting him to appeal to a higher Court such action was arbitrary and violated Due Process of Law. The Actions of the Appeals Court violated your Petitioner's right to petition as well as his right to appeal.

It is this ORDER dated April 1, 1971, from which your Petitioner originally sought relief in the pending PETITION for writ of Mandmaus, No. 1667 which was Docketed in the Supreme Court May 3, 1971.

It is this ORDER denying your Petitioner's Rights to Compulsory Process which began the deprivation of Due Process by the Appeals Court.

It is this ORDER which Demanded your Petitioner file his Brief within 30 days With or Without the Documents necessary for his defense.

It is this ORDER which the Court of Appeals reaffirmed - without a Hearing on its merits or Petitioner's argument or a complete Record upon which to base its Judgments. - when it DENIED your Petitioner's MOTION AND NOTICE OF MOTION dated May 3, 1971, in the said Court of Appeals ORDER dated May 14, 1971.

Your Petitioner states:

That the said Court of Appeals proceeded to take action on your Petitioner's PETITIONS

and the U. S. Attorney's MOTION TO DISMISS without a complete Record of your Petitioner's Case. Your Petitioner has recently seen what is called his "reconstructed" District Court Record and, over 20 Documents are missing as well as all of the Exhibits. (see Appendix for list of the missing Documents and Exhibits)

That the said Court of Appeals never requested the assistance of your Petitioner in completing the reconstruction of the burned up Files and, just the opposite - the Court of Appeals has refused to reveal the condition of the Files, etc. and has ignored every offer by your Petitioner to help replace the missing Documents.

That your Petitioner has specifically requested that the Court of Appeals not proceed with any Hearing unless the complete Record was available to the Court and, the Clerk of said Court has repeatedly ignored this request. Since these Documents and Exhibits are material to the administration of Justice, the said Court of Appeals, therefore, acted arbitrarily and deliberately in the face of an incomplete Record which actions denied your Petitioner due process of law.

There are many other pending matters before this said Court of Appeals which have never been resolved: Your Petitioner has repeatedly requested information in various letters and requested Extensions of Time in others. There is not a single item of information which your Petitioner has requested from the said Court which he has ever received from the Office of the Clerk of this Court of Appeals.

On Friday, April 30, 1971, the Clerk of Appeals dismissed your Petitioner's Appeal through an ENTRY OF DISMISSAL in spite of the

fact that Petitioner had invoked the jurisdiction of the Supreme Court to seek relief. Such action by the Clerk was null and void and without legal standing. Furthermore, this ENTRY OF DISMISSAL is void on its face since it was executed less than 30 days from April 1, 1971, the date the ORDER issued.

When your Petitioner was informed of this Action of the Clerk - the issuance of the ENTRY OF DISMISSAL - Petitioner immediately submitted a MOTION AND NOTICE OF MOTION dated May 3, 1971, requesting that the said Court of Appeals vacate the ENTRY OF DISMISSAL thereby reinstating Petitioner's Appeal. This MOTION was made upon "all the files, records and proceedings" etc. and, yet, this MOTION of your Petioner was DENIED without the said Court having the Record before it. The incomplete "reconstructed" District Court Files had been already returned to the District Court Clerk. Furthermore, all Documents relative to the errors of the respondent Judge Frank M. Johnson, Jr. were missing from this "reconstructed" District Court File. Such actions of the Court to issue an ORDER without consulting the evidence constitute a Denial of a Hearing and consequently Denial of Due Process of Law to your Petitioner. Your Petitioner's MOTION was also made upon the "grounds that Appellant had timely filed a Petition seeking relief from the Supreme Court". Petitioner was by law entitled to seek this relief by his PETITION to the Supreme Court and the said Court of Appeals possessed no lawful authority to deny your Petitioner this Right. The ORDER of the said Court of May 14, 1971 (Denying your Petitioner's request that the ENTRY OF DISMISSAL be vacated thereby reinstating your Petitioner's Appeal) was

arbitrary and denied your Petitioner Due Process of Law.

The Argument amplifying the reasons relied on for the allowance of this writ can be precisely stated in the words of the Supreme Court Rule 19(b) which says that certiorari will be granted:

> Where a court of appeals . . . has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervision.

Finally, more powerful than the words of Rule 19(b) are the words of the U. S. Constitution:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; . . . shall be the supreme law of the land; . . .

The Supreme Law says in Amendment V:

> No person shall . . . be deprived of life, liberty, or property, without Due Process of Law; . . .

Petitioner demands Due Process - the Right to be heard and the right to Appeal.

CONCLUSION: Your Petitioner believes that he has been deprived of the right of appeal by the arbitrary actions of the said U. S. Court of Appeals for the Fifth Circuit in dismissing his Appeal while it was still in effect. This Action was taken while Petitioner was appealing the issues involved in the said intermediate ORDER of

April 1, 1971, to the Supreme Court for relief through a PETITION FOR WRIT OF MANDAMUS dated April 23, 1971 and docketed May 3, 1971.

Your Petitioner further believes that said Appeal was dismissed arbitrarily and that the dismissal of his Appeal and the Denial of Petitioner's MOTION to grant reinstatment of his Appeal were in violation of Due Process of Law.

WHEREFORE, YOUR PETITIONER PRAYS That a writ of Certiorari will be issued by this Court directed to the Respondent Court of Appeals for the Fifth Circuit certified, demanding that said Court certify and send to this Court a complete transcript of the Record and all proceedings of the said Court of Appeals and the transcript and the proceedings filed in the U. S. District Court for the Middle District of Alabama to the end that said Case can be determined and reviewed by this Honorable Court as provided by law and to the end that the ORDER dismissing your Petitioner's Appeal be reversed and that the Appeal be directed to be reinstated and heard by the U. S. Court of Appeals for the Fifth Circuit, and, further that this Honorable Court may grant your Petitioner any other such relief as may seem appropriate.

May 26, 1971

Robert George Muncaster having first been duly sworn states that he has read the foregoing Petition and knows the contents thereof and the same is true to the best of his information, knowledge, and belief.

Sworn and Subscribed
before me this 26th
day of May, 1971

Virginia F. Farnell
Notary Public

Robert George Muncaster
Petitioner

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
MAR 29 1971
EDWARD W. WADSWORTH
CLERK

No. 30202

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT GEORGE MUNCASTER,

Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Alabama

---

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.

BY THE COURT:

IT IS ORDERED by this Court as follows:

(1) The motion filed on behalf of the Government to dismiss the appeal for want of prosecution, filed in the above styled and numbered cause, is hereby DENIED.

(2) If any documents are sought to be filed in this case with the clerk of this Court by Mrs. Esther Muncaster, as purported attorney or agent for the appellant, the clerk is directed that he shall not accept the same for filing but shall return the same to the sender. All correspondence, orders and other written communications of any kind from the clerk's office to appellant shall be sent by Registered (or Certified) Mail, Return Receipt Requested, and For Delivery to Addressee Only.

(3) Appellant is allowed thirty days from the date of this order within which to file his brief. The clerk is hereby directed that if appellant's brief is not filed within such time he shall forthwith enter an order dismissing the appeal.

(4) Appellant's petitions for writs of mandamus filed October 14, 1970 and January 7, 1971 are DENIED. His petition for a writ of prohibition filed October 14, 1970 is DENIED. His petition for a restraining order directed to the United States District Judge, the United States Attorney, and the clerk of this Court is DENIED.

A true copy
Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

APR 1 1971

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus
ROBERT GEORGE MUNCASTER,
Defendant-Appellant.

No. 30202

ENTRY OF DISMISSAL

Appellant having failed to timely file his brief in accordance with the attached order of the court dated March 29, 1971, the above referenced appeal was duly entered dismissed this 30th day of April, 1971.

EDWARD W. WADSWORTH
Clerk of the United States Court
of Appeals for the Fifth Circuit

Edward W. Wadsworth

FOR THE COURT - BY DIRECTION

A true copy
Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals

Edward W. Wadsworth

1971

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff, Appellee,
vs. No. 30202

Robert George Muncaster,
Defendant, Appellant.

MOTION AND NOTICE OF MOTION

TO: Ira DeMent, U. S. Attorney for Plaintiff, Appellee and to Plaintiff, Appellee:

YOU WILL PLEASE TAKE NOTICE, That Defendant, Appellant Robert George Muncaster hereby moves that Court to vacate the Entry of Dismissal herein dated April 30, 1971 and to grant Defendant, Appellant an extension of time wherein to file his brief and appendix herein to include the time that it is going to rule upon Defendant-Appellant's Petition for Writ of Mandamus filed with the United States Supreme Court plus an additional 30 days after its ruling on said Petition a copy of which is attached hereto.

The said Motion will be made upon all the files, records and proceedings and upon the grounds that Appellant had timely filed a Petition seeking relief from the U. S. Supreme Court to compel the production of legal Documents which are absolutely necessary for the preparation of Appellant's Brief in his own defense.

A copy of the letter dated April 30, 1971 is attached hereto, the facts of which contained therein are true. The Petition was deposited in the U. S. Mail to the U. S. Supreme Court on April 29, 1971. Copies of certified mail receipts are attached.

s/ Robert George Muncaster

STATE OF ALABAMA

SS

COUNTY OF MONTGOMERY

Robert George Muncaster, having been first duly sworn deposes and states that he has read and signed for (sic) foregoing Motion and Notice of Motion and the facts stated therein are true. That the facts stated in the attachments to the Petition are also true.

s/ Robert George Muncaster

Subscribed and sworn to
before me this May 3, 1971.

s/ E. C. Coreyale
Notary Public

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 30202

U. S. COURT OF APPEALS
FILED
MAY 14 1971
EDWARD W. WADSWORTH
CLERK

UNITED STATES OF AMERICA,

Plaintiff-Appellee

versus

ROBERT GEORGE MUNCASTER,

Defendant-Appellant.

- - - - -

Appeal from the United States District Court for the Middle District of Alabama.

- - - - -

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.

BY THE COURT:-

IT IS ORDERED that appellant's motion to vacate this Court's Entry of Dismissal dated April 30, 1971 and to reinstate his Appeal and for an extension of time for the filing of his brief and Appendix for a period of thirty days from the United States Supreme Court's ruling on his Petition for Writ of Mandamus, is hereby DENIED.

A true copy
Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

MAY 14 1971

APPELLANT'S DOCKET - 1

☐ CIVIL ☒ CRIMINAL ☐ BANKRUPTCY ☐ TAX COURT
☐ NLRB ☐ MOTION TO VACATE SENTENCE ☐ OTHER

COURT OF APPEALS NO. 30,202

CIRCUIT 5 APPEAL FROM Middle DISTRICT OF Alabama AT Montgomery
DATE DOCKETED 7/20/70 D.C. DOCKET NO. CR 12,114-N JUDGE Johnson
FEE PAID $25 DATE Paid 7/20/70 DATE NOTICE OF APPEAL FILED 6/22/70

UNITED STATES OF AMERICA,

Plaintiff-Appellee

versus

ROBERT GEORGE MUNCASTER,

Defendant-Appellant

APPEARANCE FILED-DATE	ATTORNEYS FOR APPELLANT
	Robert Cheek, 3929 Atlanta Hwy., Montgomery, Ala. P. O. Box 3101, 36109 Tel 272-0580
10/1/70	Arthur J. Hanes, Jr., 617 Frank Nelson Bldg., Birmingham, Ala. 3520
	Arthur J. Hanes, Sr., -do-
	Roberts C. Muncaster, (pro se), 1158 S. Perry St., Montgomery, Ala. 36104
APPEARANCE FILED-DATE	ATTORNEYS FOR APPELLEE
8/6/70	Ira de Ment
	U. S. Attorney, P. O. Box 197, Montgomery, Ala.
	D. Broward Segrest, Asst. U. S. Atty., -do-

RECORD	SENT TO	DATE
NUMBER OF VOLUMES 1		
EXS. ☒ ENV. ☐ BOX ☐ PKG. ☐ ROLL		
SUPPLEMENTAL ☐		
SECOND SUPPLEMENTAL ☐		
TRANSMITTED FOR SCREENING		
SCREENING CLASS ☐ III		
SCREENING CLASS ☐ IV	LOCATION OF HEARING	
SUMMARY CLASS II PANEL	HEARING PANEL	

APPELLANT'S DOCKET - 2

BEST AVA

TITLE: [illegible] NO. 30202

RECORD, EXHIBITS AND RICP INFORMATION	Filing:
Partial Record	
7/20/70 Record on Appeal	
Supp. Record on Appeal	
Second Supp. Record	
9/30/70 Exhibits [4] Env. [ ] Env. [ ] Pkg. [ ] Roll	
9-31-70 Appendix [ ] (P) [X] (D)	
Former Appeal Record	
Administrative Transcript	
Brief for Appellant	
Brief for Appellant	
Brief for Cr. Appellant	
Brief for Appellee	
Brief for Appellee	
Brief for Cr. Appellee	
Reply Brief for Appel	
Supp. Brief for Appellee	
Supp. Brief for Appellee	
Brief for Amicus	
Intervenor	
Pet. for Rehearing [ ] Appellant [ ] Appellee [ ] Reg. [ ] En Banc	

2. CRIMINAL APPEALS	Filing:
Order of DC Granting Appeal IFP	
Order of DC Appointing Counsel	
7/20/70 Sup. Notice of Appeal and Clerk's Statement of Docket Entries	
Affidavit of Financial Status	
C.J.A. 23 Appointing Counsel	
Motion to Appeal IFP	
Order on Motion [ ] Granted [ ] Denied	
Motion for Bail Pending Appeal	
Order on Motion [ ] Granted [ ] Denied	
Request for Appointment of Counsel	
Order on Motion [ ] Granted [ ] Denied	

3. AGENCY REVIEW CASES	Filing:
Petition for Review of Order of [ ] NLRB [ ] FPC [ ]	
Application for Enforcement—NLRB	
Answer to Application for Enforcement	
Certified List of Documents	
Cross Application for Enforcement	

4. EXTENSIONS	Filing (Motion)	Action of Court (Motion)	Expected by:
Record, Transcript to Certified List			
Order on Motion			
Designation - Appellant			
Designation - Appellee			
Designation			
8/24/70 Appendix			9/14/70
8/24/70 Appellant's Brief			9/14/70
9/3/70 Appellant's Brief (R&W)			9/14/70
Appellant's Brief			
Appellee's Brief			
Appellee's Brief			
Appellee's Brief			
Reply Brief			
Pet. for Rehearing			

5. MISCELLANEOUS FILINGS
Order of D.C. Ext. time to File Record
Notice of Election Rule 39 (c)
Appellant's Designation
Appellee's Designation
8/13/70 Request to Withdraw Record
Statement of Issues
Memo of SLC Received
Papers transferred from Misc. Docket

6. CALENDAR INFORMATION
Rule 19 Notice Issued (Class II)
Class II Panel
Oral Argument Date
Place of Argument [ ] N. O. [ ] Hou [ ] Jax [ ] Atl [ ] Mgy [ ] FLW [ ]
Case Argued [ ] by Appellant [ ] by Appellee
Case Submitted Without Argument
Hearing Panel
Case Cont'd for Reassignment
Case Reassigned to

7. OPINION & REHEARING INFORMATION
Opinion Rendered [ ] Aff'd [ ] Rev'd [ ] Rev'd & Rem'd [ ] Aff'd in Part [ ] Enf. [ ] Enf. Mod. [ ] Enf. in Part [ ] Dismissed [ ]
Per
Judge [ ] Dissenting [ ] Concurring Spec. [ ] Dissenting in Pt
Order Denying Rehearing
Order Denying Rehearing and Rehearing En Banc
Order on Petition for Rehearing [ ] Per Curiam [ ] Per

APPELLANT'S DOCKET - 3.

LABLE COPY

Filing	Response Filed By	Date	Granted	Denied	By Court	By Clerk	Date
Dismiss by Appellant							
Dismiss by Appellee U.S.							
Hearing on Original Rec.							
Hearing on Original Rec. & Typed Brief							
Leave to File Typed Brief							
Appeal from Interlocutory Order							
Leave to File Brief in Excess of 50 pgs.							
Intervene							
Amicus Curiae							
Stay Pending Appeal							
Injunction Pending Appeal							
Stay Further Proceedings in C.A.							
Summary Reversal							
Summary Affirmance							
Mandamus							
Consolidate Appeals							
Docket Appeal Out of Time							
Stay of Mandate							
Recall of Mandate				✓		RCH	7/3/74
Withdraw as Counsel							
Expedite Appeal							

9. DOCKET ENTRIES

1/10/74	Flg. Petition and Motion to Dismiss and Objections to Motion to Dismiss Appeal or for Alternative Relief flo ;by U. S. Atty.

CODE TO ENTRIES

CE–Clerk's Endorsement
F–Filed
H–Handwritten
J–Sent to Judges
L–Large
M–Memo or Offset
P–Printed
PT–Preliminary Typed
S–Small
Sub–Submitted
T–Typed

10. MANDATE INFORMATION

Bill of Costs
Flg. & Ent'g. Judgment
Issg. Copy of Jdgt. to Bill & Cost.
Rec'd as Mdt. Issd. to Clerk
Record on Appeal Ret'd to Clerk
Exhibits Ret'd to Clerk

11. SUPREME COURT INFORMATION

Preparing Proceedings on Certiorari
Preparing Supp. Proceedings on Cert.
Transmitting Orig. Exhibits to Sup. C.
Order of Sup. Ct. – Cert. to
Notice of Filing of Cert. Petition
Order of Sup. Ct. ☐ Denied ☐ Granted
Notice of Filing of Petition for Rehearing
Action of Supreme Court
Issuance of Supreme Court

DOCUMENTS AND EXHIBITS MISSING FROM APPELLANT'S DISTRICT COURT FILE

1. AFFIDAVIT OF PREJUDICE with Attachments, May 7, 1970:

a. AFFIDAVIT of Petitioner (in part) accompanying Motion and Notice of Motion, November 19, 1969 which had been entered in another Case, which was published in an Alabama newspaper, The Wetumpka Herald, November 27, 1969. (see p. 72 Appendix*)

b. PETITION To The CONGRESS Of The UNITED STATES to impeach Frank M. Johnson, Jr., Judge.

c. LETTER from Wm. L. Dickinson, M. C. dated March31, 1970. (see p. 73 Appendix)

d. JOAN OF ARC vs STOOGE, published in an Alabama newspaper, The Montgomery Independent, May 3, 1967. (see p. 74 Appendix)

e. CHALLENGE TO AMERICA, a Nationwide Release on Constitution Day, 1969. A Statement by your Petitioner published and also radio broadcast over Richard Cotten's Conservative Viewpoint in the month of October 1969. (see pp. 26-32 with Attachment pp. 33-34 Appendix)

f. THE FREE MAN'S ANSWER, a Nationwide Release on January 17, 1970. This is a Statement of your Petitioner's son Charles on his reaching his 21st Birthday Anniversary which was broadcast over a Alabama radio station and which was published in an Alabama newspaper, The Wetumpka Herald, January 29, 1970. (see p. 75 Appendix)

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* Appendix referred to is in Petitioner's Case No. 30202, U. S. Court of Appeals, 5th Circuit.

2. MOTION TO PRODUCE, filed May 7,1970. Note: This is the basis for your Petitioner's PETITION FOR WRIT OF MANDAMUS which was submitted to the said Court of Appeals on October 12, 1970, not docketed as of January 19, 1971 and denied in the said ORDER of April 1, 1971 and, which is the basis for the PETITION now before the Supreme Court, No. 1667 docketed May 3, 1971. (see pp. 76-82 Appendix)
3. SUPPLEMENTAL AFFIDAVIT OF PREJUDICE with Attachments, filed May 11, 1970:
   a. AMERICAN CHALLENGE publication, December 1, 1969. (see p. 98 Appendix)
   b. Have You Ever Read... THE UNITED NATIONS CHARTER? publication. (see p. 99 Appendix)
4. QUESTIONS TO BE ASKED JURY, filed May 14, 1970. (see p. 120 Appendix)
5. MOTION FOR JUDGMENT OF ACQUITTAL, filed May 14, 1970. (see p. 121 Appendix)
6. REQUESTED CHARGES BY DEFENDANT, No. 1 and No. 2, filed May 14, 1970. (see pp. 121-122 Appendix)
7. JURY VERDICT, filed May 14, 1970. (see p.122 Appendix)
8. COMPLAINT, sworn and subscribed November 26, 1969. (see p. 21 of Appendix)
9. WARRANT OF ARREST, November 26, 1969. (see p. 22 Appendix)
10. NOTICE by your Petitioner to the U. S. Attorney, Selective Service Officials, Federal Bureau of Investigation and the United States Marshall, November 28,1969, with attachments: (see p. 20 Appendix)
    a. NOTICE by your Petitioner to the U. S. Attorney for the Middle District of Alabama and the Selective Service Office, November 14, 1969. (see pp. 23-25 Appendix)
    b. THE CHALLENGE TO AMERICA (see above 1e)

c. THE DALY EAGLE, February 7, 1969, a publication regarding the Decision in First National Bank of Montgomery vs Jerome Daly, In Justice Court, Township of Credit River, County of Scott, State of Minnesota heard before Justice Martin V. Mahoney, December 7, 1968.

GOVERNMENT EXHIBIT No. 1: Certified copy of Indictment, Case No. 12, 252-N, U. S. District Court for the Middle District of Alabama.

GOVERNMENT EXHIBIT No. 2: Certified copy of the Judgment of Conviction in the above-mentioned Case.

GOVERNMENT EXHIBIT No. 3: Trial Transcript in the above-mentioned Case.

GOVERNMENT EXHIBIT No. 4: Affidavit of your Petitioner, filed May 13, 1970.

GOVERNMENT EXHIBIT No. 5: WMGY-Radio Interview-Robert G. Muncaster, November 24, 1969.

GOVERNMENT EXHIBIT No. 6: WMGY-Radio Interview-Robert G. Muncaster, December 2, 1969.

GOVERNMENT EXHIBIT No. 7: WSFA-T. V. News Interview-Robert G. Muncaster, November 28, 1969.

GOVERNMENT EXHIBIT No. 8: WCOV-Radio, Interview-Robert G. and Esther Muncaster on the "Viewpoint" Program.

DEFENDANT EXHIBIT: Charles R. Muncaster, Notice to Draft Board, November 25, 1969.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1762

ROBERT GEORGE MUNCASTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On June 21, 1971, the Court denied petitioner's application for a writ of mandamus to the United States Court of Appeals for the Fifth Circuit (No. 1667, this Term). The present petition raises essentially the same issues, and we rely upon our opposition to that application in urging that the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1971.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 429131 733

Supreme Court, U.S.
FILED
NOV 11 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

No. 70 - 219

ROBERT GEORGE MUNCASTER, PETITIONER.

vs.

UNITED STATES OF AMERICA:

THE U. S. COURT OF APPEALS, FIFTH CIRCUIT
Chief Judge John R. Brown, and
Clerk of the Court;
and
U. S. DISTRICT COURT, MIDDLE DISTRICT OF ALABAMA:
Judge Frank M. Johnson, Jr., and
Clerk of the Court, RESPONDENTS.

PETITION FOR REHEARING ON CERTIORARI IN THE SUPREME COURT OF THE UNITED STATES

ROBERT GEORGE MUNCASTER
Petitioner
1158 South Perry Street
Montgomery, Alabama 36104

JEROME DALY, COUNSEL
28 East Minnesota Street
Savage, Minnesota

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IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

ROBERT GEORGE MUNCASTER, PETITIONER

vs

UNITED STATES OF AMERICA:

THE U. S. COURT OF APPEALS FOR THE FIFTH CIRCUIT: -
Chief Judge John R. Brown, and
Clerk of the Court;
and
U. S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA:-
Judge Frank M. Johnson, Jr, and
Clerk of the Court, RESPONDENTS.

PETITION FOR REHEARING ON A WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE UNITED STATES - To The United States Court of Appeals for the Fifth Circuit, Etc., and, To The United States District Court for the Middle District of Alabama, Etc.

TO: The Honorable, The Chief Justice and Associate Justice of the Supreme Court of the United States of America.

Your Petitioner Robert George Muncaster respectfully represents and shows this Court as follows:

I.
OFFICIAL REPORTS

The Official Reports are the same as found in Petitioner's attached PETITION FOR WRIT OF CERTIORARI, No. 70-219.

In addition, Petitioner's PETITION FOR WRIT OF MANDAMUS, docketed Monday, May 3, 1971, and numbered No. 1667, October Term, 1970, and Petitioner's ANSWER to the MEMORANDUM OF THE SOLICITOR GENERAL. dated June 7.1971 is referred to as if set out herein.

II.
JURISDICTION OF THE COURT

The grounds upon which the jurisdiction of the Supreme Court of the United States is invoked are as found in Petitioner's attached PETITION FOR WRIT OF CERTIORARI, No. 70-219 and, in addition:

Petitioner's PETITION FOR WRIT OF MANDAMUS and his ANSWER to the MEMORANDUM OF THE SOLICITOR GENERAL.

Jurisdiction is conferred upon the Supreme Court of the United States by Article III., U. S. Constitution; 28 U. S. Code 1651, 1254 and 2106; Article VI. and Article I., Section 8, U. S. Constitution; the common law; and Rule 58, Supreme Court Rules.

III.
QUESTIONS PRESENTED FOR REVIEW

A - Denial of Due Process Through Clerical Error.
(Intervening Circumstances)

Has Petioner been denied due process of law and, including the right to an Appeal, when his right to rehearing on his PETITION FOR WRIT OF MANDAMUS was denied through clerical error and when said denial caused the Solicitor General to pray this Court to deny CERTIORARI as res judicata, and, with the resulting consequence that CERTIORARI was denied and this Petitioner's right of Appeal has been negated and made void?

B - Denial of Rights by Means of Improper Court Process.

(Intervening Circumstance &)
(Other Substantial Ground)
(Not Previously Presented)

Is an ORDER of a Court of Appeals which requires an Appellant to take an Action within thirty days - or suffer dismissal of his Appeal - valid and lawful when said ORDER issued with no date in the body and when no date as specified in 28 U. S. Code 1691 and Fifth Circuit Local Rule 1(c) was affixed as of the time or date the Court is purported to have acted? And further: Is the Appellant-Defendant in a Court of Appeals forbidden by any Law the right to appeal said ORDER and invoke the jurisdiction of the Supreme Court to review said ORDER and grant relief?

C - Denial of the Right to Enjoy Assistance of Counsel.

(Intervening Circumstance &)
(Other Substantial Grounds)
(Not Previously Presented)

Does the failure to heed the Constitutional admonition that the accused enjoy the right to assistance of Counsel negate completely a Court of Appeals jurisdiction to proceed with the dismissal of an Appellant's Case and with the denial for reinstatement? Are the proceedings void, are the occurences therein vitiated, do the transpirations otherwise legal go for nought?

IV.
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES OF THE COURTS

(1) Constitution of the United States of America:

★ AMENDMENT I. ★

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

★ AMENDMENT V. ★

No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

★ AMENDMENT VI. ★

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

★ AMENDMENT IX. ★

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

★ AMENDMENT X. ★

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

THE JUDICIAL DEPARTMENT

★ ARTICLE III. ★

SECTION 1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party: to controversies between two or more states, *between a state and citizens of another state*, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, *citizens or subjects.*[13]

[13] These two italicized passages are limited by Amendment XI.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before-mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

(2) Statute - Title 28, U. S. Code:

Section 1254. Courts of appeals; certiorari; appeal; certified questions:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) . . .

Section 1651. Writs:

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agree-

able to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

Section 1691. Seal and teste of process:

All writs and process issuing from a court of the United States shall be under the seal of the court and signed by the clerk thereof.

Section 1735. Court record lost or destroyed where United States interested:

(a) When the record of any case or matter in any court of the United States to which the United States is a party, is lost or destroyed, a certified copy of any official paper of a United States attorney, United States marshal or clerk or other certifying or recording officer of any such court, made pursuant to law, on file in any department or agency of the United States and relating to such case or matter, shall, on being filed in the court to which it relates, have the same effect as an original paper filed in such court. If the copy so filed discloses the date and amount of a judgment or decree and the names of the parties thereto, the court may enforce the judgment or decree as though the original record had not been lost or destroyed.

(b) Whenever the United States is interested in any lost or destroyed records or files of a court of the United States, the clerk of such court and the United States attorney for the district shall take the steps necessary to restore such records or files, under the direction of the judges of such

court.

Section 2106. Determination:

The Supreme Court or any other court of appellate jurisdiction may affirm modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

(3) Rules of the Supreme Court of the United States:

Rule 58 - Rehearings.

1. . . .

2. . . .

3. . . .

4. Consecutive petitions for rehearings, and petitions for rehearing that are out of time under this rule, will not be received.

(4) Local Rules of the United States Court of Appeals for the Fifth Circuit:

Rule 1. Name, Seal and Process

(a) Name. . . .

(b) Seal. . . .

(c) Writs and Process. Writs and process of this court shall be under the seal of the Court and signed by the clerk.

(5) Federal Rules of Appellate Procedure:

Rule 26:

(a) Computation of time. In computing any period of time prescribed by these

rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States. It shall also include a day appointed as a holiday by the state wherein the district court which rendered the judgment or order which is or may be appealed from is situated, or by the state wherein the principal office of the clerk of the court of appeals in which the appeal is pending is located.

(b) Enlargement of Time. The court for good cause shown may upon motion enlarge the time prescribed by these rules or by order for doing any act, or may permit an act to be done after the expiration of such time; . . .

(c) Additional Time After Service By Mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him

and the paper is served by mail, 3 days shall be added to the prescribed period.

V.
STATEMENT OF THE CASE

The Statements of the Case in your Petitioner's PETITION FOR WRIT OF MANDAMUS, dated April 29, 1971, docketed May 3, 1971, No. 1667, October Term, 1970, and PETITION FOR WRIT OF CERTIORARI, dated May 26, 1971, docketed May 28, 1971, No. 1762, October Term, 1970 (now called N0. 71-219) are made a part of this Statement.

In addition to these Statements, your Petitioner states as follows:

(1) April 29, 1971, your Petitioner asked this Court for Mandamus to force the Government to produce certain Official Documents necessary for his defense in the Appeals Brief (No. 1667, October Term). These Documents had been originally denied by the Trial Judge or not produced in accord with the ORDER of the Trial Court on your Petitioner's Motion to Produce.

(2) On Friday, April 30, 1971, the Clerk of the Court of Appeals, 5th Circuit, dismissed Petitioner's Case on ORDER of the Court for "lack of prosecution".

(3) On May 18, 1971, this said Court of Appeals denied your Petitioner's Motion for Reinstatement of his Appeal by ORDER of said Court.

(4) June 21, 1971, The Petitioner's PETITION FOR WRIT OF MANDAMUS was denied by means of denying the Motion for Leave to File a Petition

which Rule 31 (Supreme Court) requires to preface the said PETITION - even though your Petitioner had contested this Rule requirement in the said Motion for Leave to File itself.

The Solicitor General argued that this said PETITION was not a Petition for writ of Mandamus but rather, it was, in fact, a Petition for writ of Certiorari.

(5) Two days later, June 23, 1971, Petitioner notified the Clerk of this Court by letter of his intention to submit a Petition for Rehearing of his PETITION FOR WRIT OF MANDAMUS. The letter is as follows:

Dear Sir:

Your Notice arrived telling me that my lawful Petition for a Writ of Mandamus has been denied through the subterfuge of a so-called "denial" of a Motion for Leave to File a Petition.

This is Notice to you that I am demanding a rehearing of this issue and furthermore, I demand to know when this socalled rehearing will be held so I can make my plans to come to Washington D. C. and be on the scene personally to monitor the proceedings or participate in them. Furthermore, I demand that you notify the Court immediately that I intend to be heard orally. If they persist in their refusal to allow me this right, I demand that I be advised by written ORDER to that effect.

Frankly, Mr. Seaver, my patience is wearing thin.

Your early and complete reply is necessary and proper.

Constitutionally yours,

enc.

(6) June 29, 1971, The Clerk of this Court issued a denial and final decision in the name of this Court by Official letter as follows:

> In response to your letter of June 23d, I must inform you that rule 58(4) provides that successive petitions for rehearing shall not be received and I further inform you that your case in this Court is now closed.

(7) On receipt of this said Letter from the Office of the Clerk, Petitioner concluded that this Action was Official and Final, although he failed to understand its meaning of "successive petitions".

(8) In the meantime, on May 26, 1971, your Petitioner submitted a PETITION FOR WRIT OF CERTIORARI to force the Court of Appeals, 5th Circuit, to reinstate Petitioner's Case which had been dropped while Petitioner's PETITION FOR WRIT OF MANDAMUS was within the jurisdiction of the Supreme Court and after Petitioner had requested from the said Court of Appeals a stay for relief while the matter was reviewed (see Item(3) above).

(9) On October 3, 1971, Petitioner sent the following Telegram to the Clerk of the Supreme Court to show that the record was defective and incomplete and to further substantiate prior showings of Trial Judge bias. The Telegram stated:

> TRANSMITTED AIRMAIL THIS DATE FORTY COPIES OF OFFICIAL DOCUMENTS MISSING FROM THE APPEALS COURT RECORD DEMANDED FOR CERTIORARI HEARING IN YOUR COURT

CASE NO. 1762 OCTOBER TERM. SINCE THIS RECORD INDICATES OFFICIAL NEGLIGENCE TO THE DETRIMENT OF DEFENDANT OUR SUPPLEMENT TO CERTIORARI PETITION WILL ARRIVE THIS WEEK. DO NOT DOCKET HEARING ON MERITS PRIOR TO OCTOBER 14TH OR JUSTICE CANNOT BE DONE.

(10) On October 12, 1971. This Court denied your Petitioner's application for WRIT OF CERTIORARI.

(11) Subsequent to this Denial, your Petitioner has been advised by the Office of the Clerk that they had previously misfiled your Petitioner's Documents - through inadvertance and confusion - with another Supreme Court Petitioner: Charles Robert Muncaster.

This misfiling is factual and it is material to the Issues involved here in this Case.

(12) At all times material herein, the Petitioner did not enjoy the Right to assistance of Counsel. The Statement of this part of this Case is as follows:

(a) During the Trial in the U. S. District Court of the Middle District of Alabama before Judge Frank M. Johnson, Jr., Respondent, your Petitioner was denied the Right to have Jerome Daly, Savage, Minnesota, to respresent him as Counsel of Choice. Mr. Daly is a combination Trial and Appellate Lawyer. Your Petitioner, thus was forced to look elsewhere for assistance. A Robert Cheek accepted to handle the Case at the last minute. After the Trial, Mr. Cheek told Petitioner that he knew nothing about Appellate work or procedure and could not represent your Peti-

tioner on Appeal.

(b) That the Law Firm of Hanes and Hanes, Birmingham, Alabama, agreed to represent your Petitioner upon Appeal. They agreed to take the Case and present it upon the Constitutional Issues and assignments of error as set forth by your Petitioner. However, on September 1, 1970, Mr. Hanes, Jr. asked to leave the Case. The following Motion was sent to the Court of Appeals by Hanes:

(Title deleted)

Comes now Arthur J. Hanes, Jr., Counsel for Appellant, Robert G. Muncaster in the above captioned cause and respectfully moves this Honorable Court for leave to withdraw as Counsel for said Defendant and as grounds therefore, assigns the following:

1. Appellant has taken unyeilding (sic) positions regarding the constitutionality of the judicial and administrative systems as presently constituted and existing within the United States, based upon his sense of duty to his oath as a naval officer to support the Constitution of the United States. Appellant's hard core attitude toward these positions has placed Counsel in irreconcilable conflict between his duty to represent Appellant with skill, zeal and ardor and his duties to the law and to the Court.

WHEREFORE, PREMISES CONSIDERED, your Petitioner respectfully prays th that his Motion for leave to withdraw be granted and that his name be removed as Counsel for Appellant and that Appellant be granted a thirty day extension of time from September 4, 1970, for the filing of his brief in this cause.

(c) At the time the said Court of Appeals dismissed your Petitioner's Appeal, April 30, 1971, and arbitrarily denied Petitioner's Motion for re-instatement, May 14, 1971, your Petitioner did not enjoy the right and did not have the Assistance of Counsel.

(d) On April 1, 1971, this said Court of Appeals upheld the prior Order and summary Judgment, denying Jerome Daly leave to appear in Appeals Court Case No. 29120. This Action of the Court of Appeals indicated an irreversible bias and prejudice against the Counsel which this Petitioner chose to represent him.

(e) On June 30, 1971, the Office of the Clerk of the Supreme Court was notified by letter from your Petitioner as follows:

> You will find power of Attorney naming Jerome Daly to speak for me in the matters appearing in this Court. You will receive another mailing on this matter as soon as I can get the other papers notarized.
>
> This is my notice to you that I intend to amend my Certiorari Petition now before you to show that I have been denied the Right of Counsel in the court of first instance and that this loss of counsel was a further handicap to me when the Appeals Court denied me my rights to Subpoena Power and the use of the documents subpoenad so I could prepare my brief. The Appeals Court took advantage of me, an honest citizen, with their slick, unConstitutional "rules", "inherent judicial power", and traditions. I resent their trickery.
>
> Constitutionally yours,
>
> Robert [illegible]

(f) In the matter of this PETITION FOR REHEARING, the circumstances of substantial and controlling effect intervening between April 30, 1971 - the date of the said Court of Appeals ENTRY OF DISMISSAL - and the date of this PETITION for Rehearing are as follows:

That on July 16, 1971, the Supreme Court of the State of Minnesota came down with a decision stating:

> Upon our decision in In Re Daly, 284 Minn. 567, 171 N. W. 2d 818, adjudging respondent, Jerome Daly to be guilty of contempt of this Court and ordering his temporary suspension from the practice of Law, an investigation into his fitness and competence to continue to practice before courts of this state was made by the State Board of Law Examiners. . . . In finding Respondent in contempt of court and ordering his temporary suspension from practice because of the extraordinary nature of his professional behavior, we recognize that a conviction of Contempt of court ordinarily does not reflect on an Attorney's fitness, trustworthiness, or competence. Accordingly we authorized Respondent to apply for limited exceptions to the suspension Order so that he might complete matters pending in his office. . . .

The decision of the Minnesota Supreme Court goes on to state that in effect Daly was all done. To clean up his work as he was going to get disbarred. The reasons:

> Daly was disbarred for exercising his 1st Amendment rights to freedom of the press, speech, assembly, Petition and free access

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to the Courts. Daly's only sin was that he took a hard core position and insisted that the Constitution of the United States be upheld. A copy of this Disbarment decision is set out in full as follows:

EIGHTY-THIRD YEAR ★ No. 142 Reg. U. S. Pat. Off. TUESDAY, JULY 20, 1971

SUPREME COURT DECISIONS

Thirty-Third Year Issue No. 28

Complete Decisions of the 1971 Term SUPREME COURT of the State of Minnesota

Telephone 221-2561
John C. McCarthy, Clerk
Richard E. Klein, Administrative Assistant
Wayne O. Tschimperle, Deputy Clerk
Ruth I. Harris, Reporter
Telephone 221-2462

Hon. Oscar R. Knutson..Chief Justice
Hon. Martin A. Nelson, Associate Justice
Hon. William P. Murphy, Associate Justice
Hon. James C. Otis, Associate Justice
Hon. Walter F. Rogosheske, Associate Justice
Hon. C. Donald Peterson, Associate Justice
Hon. Fallon Kelly...Associate Justice
Hon. Frank T. Gallagher, Associate Justice, Retired

CASES FILED FRIDAY, JULY 16, 1971

SUPREME COURT

42174—No. 153-¾ Per Curiam
Took no part, Knutson, C. J.
In re Jerome Daly, Jerome Daly, pro se, Savage,
Kenneth M. Anderson, Attorney, Minneapolis, Herbert Davis, Attorney, Minneapolis.

Heard and considered en banc.

OPINION

PER CURIAM.

This is a disciplinary proceeding conducted in accordance with the rules of this court governing professional responsibility of members of the bar of Minnesota admitted and licensed to practice as attorneys at law.

Upon our decision in In re Daly, 284 Minn. 567, 171 N. W. (2d) 818, adjudging respondent, Jerome Daly, to be guilty of contempt of this court and ordering his temporary suspension from the practice of law, an investigation into his fitness and competence to continue to practice before courts of this state was made by the State Board of Law Examiners.*

* During the pendency of these proceedings, the functions of the State Board of Law Examiners were transferred to the State Board of Professional Responsibility and the State Administrative Director on Professional Conduct.

Thereupon, a petition and accusation filed by the board for respondent's disbarment, together with his answer, were, as authorized by our rules,* referred to the Honorable Donald C. Odden, Judge of the District Court of the Sixth Judicial District, who was appointed as referee to hear and report the evidence.* Following an

* Rule I, Rules of the Supreme Court for Discipline and Reinstatement of Attorneys (283 Minn. ix), now Rule 8, Minnesota Supreme Court Rules on Professional Responsibility, adopted December 16, 1970.

* The Honorable E. R. Selnes, retired judge of the District Court of the Eighth Judicial District, was originally appointed referee. Upon his request, after respondent filed an affidavit of prejudice, Judge Selnes was relieved of the assignment and Judge Odden was appointed.

BEST AV

3-day evidentiary hearing and submission of an 888-page verbatim transcript of the testimony, the referee, in compliance with the rules and the order of appointment, filed comprehensive findings of fact, conclusions, and a recommendation that respondent be disbarred. We have examined the evidence with care and are constrained to adopt the fully supported findings of the referee and to order respondent disbarred for numerous acts of unprofessional conduct.

As covered in detail in In re Daly, supra, respondent, without justifiable explanation or excuse, intentionally and defiantly disregarded an order of this court prohibiting him and a justice of the peace from further proceedings in a declaratory judgment action, then pending before the justice of the peace, which was obviously, and for numerous reasons outlined in our decision, beyond the limits of jurisdiction of a justice of the peace. In finding respondent in contempt and ordering his temporary suspension from practice because of the extraordinary nature of his professional behavior, we recognized that a conviction of contempt of court ordinarily does not reflect on an attorney's fitness, trustworthiness, or competence. Accordingly, we authorized respondent to apply for limited exceptions to the suspension order so that he might complete matters pending in his office. Further we stated:

"We reserve jurisdiction of this matter to permit further proceedings, the object of which will be to determine whether this contumacious conduct of Jerome Daly is or is not an isolated instance of impropriety. * * *

* * * * *

"* * * Final resolution of the matter must depend on whether the acts of this attorney are a part of a persistent and continuing effort to defy the authority of the courts and in part on whether there is any disposition to amend the contumacious behavior demonstrated." 284 Minn. 568, 571, 171 N. W. (2d) 820, 823.

Contrary to respondent's fanciful assertions that these proceedings are a conspiracy by banks and their directors to put an end to his persistent attacks upon the constitutionality of the monetary system of the United States, disciplinary proceedings, including this one, are not designed to punish an attorney or to prevent him from, in good faith, espousing a legal course, however unpopular or seemingly untenable, but rather to discharge this court's responsibility to protect the public, the administration of justice, and the profession by imposing disciplinary sanctions, including removal from practice, upon those attorneys who, after careful investigation, proper notice, and hearing, are found to have demonstrated that they do not possess the "qualities of character and the professional competence requisite to the practice of law." Baird v. State Bar of Arizona, 401 U. S. 1, 7, 91 S. Ct. 702, ——, 27 L. ed. (2d) 639, 647. See, also, Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U. S. 91 S. Ct. 720, 27 L. ed. (2d) 749; Schware v. Board of Bar Examiners, 353 U. S. 232, 77 S. Ct. 752, 1 L. ed. (2d) 796; Hallinan v. Committee of Bar Examiners, 65 Cal. (2d) 447, 453, 55 Cal. Rptr. 228, 233, 421 P. (2d) 76, 81. The United States Supreme Court and all courts recognize that—

"* * * [t]he power of disbarment is necessary for the protection of the public in order to strip a man of the implied representation by courts that a man who is allowed to hold himself out to practice before them is in 'good standing' so to do." Theard v. United States, 354 U. S. 278, 281, 77 S. Ct. 1274, 1276, 1 L. ed. (2d) 1342, 1345.

Although disciplinary proceedings have been described in the context of the requirement of procedural due process as "adversary proceedings of a quasi-criminal nature" (In re Ruffalo, 390 U. S. 544, 551, 88 S. Ct. 1222, 1226, 20 L. ed. [2d] 117, 122), we have noted that they are not considered in the same light as an ordinary adversary action but are proceedings sui generis:

"A disciplinary proceeding is not the trial of an action or suit between adverse parties, but an investigation or inquiry by the court into the conduct of one of its officers in order to determine his fitness to continue as a member of his profession." In re Application for Discipline of Peterson, 760 Minn. 339, 344, 110 N. W. (2d), 9, 13.

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Since lawyers are granted a monopoly to perform legal services for hire, it is self-evident that they, like all monopolies, must be subject to strict regulation with respect to admission to practice and to the performance of professional services, as well as to public accountability for adherence to the rule of law, canons of ethics, and standards of professional responsibility.* The formulation of ethical principles and standards of professional conduct, as well as the procedures for enforcement, is, and must be, under our constitutional system, the responsibility of the judicial branch of government. The ultimate determination governing admission, supervision, and discipline of attorneys in this state, including their removal from practice before our courts, is vested in this court. In re Disbarment of Tracy, 197 Minn. 35, 266 N. W. 88, 267 N. W. 142.

The ancient and fundamental standards of professional conduct are well established. These standards are taught as a required subject in the law schools of this state. Questions concerning them are included in examinations for admission to practice. They are set forth in the Canons of Professional Ethics and, as recently revised, in the Code of Professional Responsibility adopted by the American Bar Association and by this court.* As in all disciplinary proceedings, the canons, and now the new code, encompass the standards by which respondent's conduct must be judged in determining his fitness to continue in the practice of law.

An overall view of the voluminous record compels us to agree with the referee's conclusions that respondent—

"* * * has failed to conduct himself in a manner consistent with the ethical principles of the legal profession, has deliberately and intentionally disregarded those ethical principles in the conduct of his practice, has taken unconscionable advantage of his position as a lawyer of this state, has flaunted his disregard for the authority of Judges, Courts, Statutes, and the ethical rules governing conduct required of attorneys, and has offered no persuasive evidence or excuse for his conduct."

Moreover, given every opportunity to explain or justify alleged misconduct as not "a persistent and continuing effort to defy the authority of the courts" (284 Minn. 571) but occasioned by inadvertence, misconception of professional responsibilities, or compelled by circumstances not of his making or beyond his capacity to control, respondent exhibited indifference to these proceedings and undertook to use the hearing before the referee as a forum for expounding his own views concerning the constitutionality of the Federal Reserve System and the validity of Federal Reserve notes, as well as the constitutionality of our Rules of Civil Procedure and those governing the conduct and discipline of attorneys. By his conduct in representing himself before the referee and upon oral argument before this court, respondent has, at best, demonstrated a preverted misconception of the role and function of an attorney and the necessity for strict regulation and accountability of attorneys or, at worst, a deliberate and defiant rejection of any judicial control of his professional activities.* While such a miscon-

* See, A. B. A., Code of Professional Responsibility, Preamble.

* Canons of Professional Ethics were adopted May 2, 1964, (241 Minn. xvii) and the Code of Professional Responsibility on August 4, 1970 (286 Minn. ix). Most of respondent's misconduct occurred while the former were in force. The new code, however, retains and reaffirms as disciplinary rules, mandatory in character, the same proscriptions in the older one with which respondent's behavior is equally at odds. Where appropriate, therefore, references to both are cited in this opinion.

* At oral argument, respondent not only questioned the constitutional authority of courts to license attorneys or to establish and enforce rules regulating professional conduct but, in expressing his indifference to these proceedings and to the consequences of an order disbarring him, insisted that the right to represent persons in a legal matter derives from the client, not from the courts, and a lawyer's accountability for services rendered should be governed only by faithfulness to his client, his "conscience," and obedience to laws proscribing criminal conduct.

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ception, if it exists, provokes our perplexity and commiseration, it, no less than respondent's intentional, persistent, and habitual misconduct as found by the referee, and his declared intention before this court that he will continue to disobey any court orders or rules governing his professional conduct which he regards as harsh, oppressive, or unconstitutional in the future, leaves us no choice but to order his disbarment.

The ultimate factual findings of the referee, supported by specific and detailed instances and ample evidence, are, in essence, that respondent has "persistently and perniciously" used his position as a licensed attorney, for himself and as counsel for others, to subvert the processes of justice by (1) initiating unfounded lawsuits for the purposes of harassing numerous named banking institutions, public officials, and private persons, and to avoid legal obligations of himself and his clients, thereby depriving parties involved of property to which they were lawfully entitled, causing them very substantial expense, and occupying the time and efforts of courts in nearly all levels of jurisdiction;*

(2) by advancing in such cases by "immaterial and unnecessarily inflammatory" allegations his personal theory of the unconstitutionality of the monetary system of the United States;* (3) by continuing to espouse his theory in spite of repeated rulings by courts of record that his contentions are untenable and unfounded and despite an order of the United States District Court for the District of Minnesota restraining him from relitigating the issue, and in contemptuous disregard thereof without seeking appeal of the lower court ruling and orders;* (4) by employing tactics in his professional activities deliberately intended to delay the timely and orderly disposition of cases such as failing to appear for hearings and trial, indiscriminately filing affidavits of prejudice, often containing scandalous accusations, against numerous judges;* abusing the assertion of the attorney-client privilege, conspiring to conceal and divert assets under the control of a court;* and willfully refusing to follow lawful rulings and orders of the courts of the United States and of this state.*

We regard as most serious and intolerable respondent's willful, persistent, and continuing unprofessional behavior in defying the authority, rules, and orders of courts. The finding of the referee confirms a pattern of conduct indicated by respondent's contumacious behavior before his court which resulted in his temporary suspension from practice. Indeed, throughout these proceedings, he does not contest his disregard of rules and court orders which he views as unlawful. The following testimony before the referee unmistakably reflects his philosophy of an attorney's obligation in this respect and his disposition to continue such behavior.

* Conduct violative of A. B. A., Canons of Professional Ethics, Canon 30, and of A. B. A., Code of Professional Responsibility, DR 7-102(A)(1).

* The United States Court of Appeals for the Eighth Circuit, in affirming a dismissal of a complaint in a purported conspiracy action, characterized the complaint filed by respondent as "16 printed pages of disconnected, incoherent and rambling statements," observing, "At best the complaint represents a euphoric harassment of bank officials, lawyers and federal courts." Koll v. Wayzata State Bank (8 Cir.) 397 F. (2d) 124, 125.

* Referee's findings 4, 4A, 4B, and 4B-III. See, prohibiting "[s]tirring up strife and litigation," A. B. A., Canons of Professional Ethics, Canon 28, made more specific by A. B. A., Code of Professional Responsibility, DR 7-106A, requiring obedience to a ruling of a tribunal.

* For example, respondent filed one such affidavit stating as follows: "* * * Further I believe and so state that [he] has a prejudice against the Declaration of Independence and the Constitution of the United States and the Constitution of Minnesota and a bias in favor of that element advocating the nullification and overthrow of it. That this case involves a dispute with the Lutheran Church, Missouri-Synod, which is composed of preachers arrogating attributes of Diety [sic] to themselves in association with Papal Jewish Hegemony, all of whom are in vortex with each other rotating and operating on a common axis sited in Hell." See, A. B. A., Canons of Professional Ethics, Canon 1, and A. B. A., Code of Professional Responsibility, DR 8-102(B).

* See, Peterson v. Bartels, 284 Minn. 463, 170 N. W. (2d) 572, and In re Application for Discipline of Drexler, — Minn. —, — N. W. (2d) —, filed June 18, 1971.

* See, referee's findings 4B, 4B-II, 4B-III, 5, and 7; A. B. A., Canons of Professional Ethics, Canons 21 and 22; A. B. A., Code of Professional Responsibility, DR 7-101(A)(1) and DR 1-102(A)(4, 5, 6).

"Q. * * * Mr. Daly, you have claimed in the petition in this contempt proceeding, that the Supreme Court had no jurisdiction to enter its order dated September 5, 1969, Exhibit One?

"A. Suspending me from the practice of law.

"Q. You have made the claim that the Court had no jurisdiction to do so and it is an invalid order, is that right?

"A. That is right.

"Q. And you also claim that the order of Judge Lord, holding you in contempt, was an invalid order?

"A. I think that is right.

"Q. And you have indicated that the order of Judge Stephenson—

"A. That is not a lawful order.

"Q. Restraining you from doing anything further or arguing further the constitutionality of the Federal Reserve System, was not valid?

"A. Not a lawful order.

"Q. You have indicated that the Justices of the Supreme Court of Minnesota have executed orders relating to the adoption of Rules of Civil Procedure, which are not lawful orders?

"A. Yes. * * *

"Q. Will you explain to the Court, Mr. Daly, whether it is your belief that an order is lawful only if you think it is lawful?

"A. No, no, it is lawful if it squares with the law.

"Q. And if it squares with the law in your opinion or in whose opinion?

"A. Well, I think any citizen or any person walking the face of the earth has a right to be guided by his own conscience, within the bounds of reason. And I can look at an order and I can make a determination in my mind whether it is lawful or not.

"Q. And whether or not you will follow it?

"A. That is right * * *.

* * * * *

"Q. Now, Mr. Daly, if an order was issued out of the Supreme Court of the United States determining that the Federal Reserve System was a constitutionally appropriate system, would you follow that order?

* * * * *

"A. Not if they are going to perpetrate a fraud on the people.

"Q. Let's assume that what they do is to declare the Federal Reserve System is a constitutional system.

* * * * *

"A. Do you want to know if I would follow the order of the Supreme Court of the United States if they said that the banks had authority to manufacture money and credit out of nothing; you are asking me if I would follow that?

"Q. Yes, Sir.

"A. I would not."

Because it is elementary that our system of justice is founded on the rule of law, a willful disobedience to a single court order may alone justify disbarment. Minn. St. 481.15, subd. 1(3); In re Application for Discipline of Joyce, 242 Minn. 427, 65 N. W. (2d) 581, certiorari denied, 348 U. S. 883, 75 S. Ct. 134, 99 L. ed. 694.

No useful purpose would appear to be served by repeating the detail of the instances supporting the foregoing summary of ultimate findings, all of which are adopted as the basis for respondent's removal from practice. It should be noted, however, that respondent's persistent and continuing attacks on our national monetary system can hardly be regarded as zealous advocacy or a good-faith effort to test the validity of repeated decisions of courts of record. For, as found by the referee, up to the time of his findings and recommendations respondent had avoided payment of any Federal income tax for 1965 and subsequent years on the asserted ground that he has not received gold and silver coin and, therefore, had no earnings that were taxable.* Also, he has taken personal advantage of the system he attacks by borrowing money from a bank to purchase lakeside property, only to sub-

* Respondent's testimony confirms this finding: "Q. Mr. Daly, the exhibits [respondent's amended tax returns for 1965, 1966, 1967, and 1968] disclosed no figures in which any income was reported by you, is that correct?

"A. Well, they use the sign dollar, which I understand means dollar. And there were no figures disclosed with reference to income, that is right; dollars, as such.

"Q. You interpreted the word dollars to mean gold and silver coins, received by you?

"A. Or their equivalent.

"Q. Which would be a certificate redeemable in gold or silver?

"A. Freely and readily available."

sequently defeat the bank's repossession after mortgage foreclosure by taking the position that the bank's extension of credit was unlawful, obligating him neither to pay the debt nor to surrender possession following expiration of the time to redeem. As detailed in the referee's finding, we regard the tactics employed by respondent in the unlawful detainer proceedings before the justice of the peace as not only unprofessional but reprehensible.

The misconduct found by the referee, and demonstrated by respondent's oral declarations before this court in violation of the Canons of Professional Ethics, reflects professional irresponsibility to such a degree as to render respondent totally unfit to continue to discharge the duties of an attorney.

Let judgment of disbarment be entered.

MR. CHIEF JUSTICE KNUTSON took no part in the consideration or decision of this case.

Since that time, Petitioner has learned that a William Drexler has been disbarred by the Minnesota Supreme Court for not being a stool pigeon on his Client. See the Minnesota Supreme Court Decision, In Re Application for the discipline of William Drexler decided by the Supreme Court of Minnesota June 18, 1971, where the following disciplinary rule was applied: A.B.A. Canon of Ethics:

DISCIPLINARY RULES

DR 7-101 Representing a Client Zealously.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.[71]

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.[72]

Here following is the character of the A. B. A. Disciplinary Rules:

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial,[8] the Disciplinary Rules should be uniformly applied to all lawyers,[9] regardless of the nature of their professional activities.[10] The Code makes no attempt to prescribe either disciplinary procedures or penalties[11] for violation of a Disciplinary Rule,[12] nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances.[13] An enforcing agency, in applying the Disciplinary Rules, may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations.

No wonder that Petitioner's Counsel Hanes felt compelled to withdraw from the Case when he became faced with the powerful and irreconcilable conflict of interest between the Constitution of the United States as written and supported by the Petitioner Muncaster and the opposing forces represented by administrative rules, regulations, procedures, Bar Association dicta, unConstitutional Statutes, Treaties, and the like. Counsel Hanes anticipated that he might well be disbarred the same way Daly was disbarred in the first instance without CHARGES, NOTICE, HEARINGS, TRIAL, OR JUDGMENT - entirely without due process of law.

Petitioner's first choice of Counsel in the Court of first instance was Jerome Daly. Daly had been suspended from the practice of law through no malfeasance but only because of his unyielding allegiance to the Constitution. The Minnesota Supreme Court ordered a hearing after the suspension to find grounds to disbar Daly. A Hearing was held after that. Daly was disbarred on July 16, 1971. The decision shows that Daly

was disbarred because he would not follow the un-Constitutional Canons of Ethics and sacrifice the interest of his client on the altar of expediency or personal gain.

(g) There has been a thread of anti-Constitutional Bias which has manifested itself from the Court of first instance through the Court of Appeals. It has only come to light of late date that the American Bar Association and the State Bar Associations have precipitated and woven this thread which moved both Courts to keep Daly out and prevent your Petitioner from employing the Counsel of his Choice to assist him.

(h) Petitioner never enjoyed the right to Counsel at any stage of the Proceedings after the date that Attorney Hanes left the Case on September 1, 1970. Since that day, the Clerk of the said Court of Appeals never granted your Petitioner any satisfactory response to questions, requests, Motions or Petitions. As has been heretofore stated, in PETITIONS for writ of Mandamus and Certiorari before this Court, the Clerk of the said Court of Appeals has never really cooperated with your Petitioner in any way so that your Petitioner could protect his lawful interests. A long series of negligent acts, omissions, false Docket entries, and missing Papers has been presented to this Court in prior Statements. The Clerk has negligently lost possession of two radio tape recording Government Exhibits which were used to bring in a conviction and those tapes have never been transcribed and made available in the Court Record.

Petitioner has never had a Hearing or an Argument before the Court of Appeals to protect his interests in any stage of the Proceedings.

* * *

VI.
ARGUMENT

A - DENIAL OF DUE PROCESS THROUGH CLERICAL ERROR.

Petitioner was first denied the PETITION FOR WRIT OF MANDAMUS, No. 1667, October Term, 1970, and then wrongly denied any rehearing because of the erroneous filing on the part of the Supreme Court Clerk (see (6) p. 12 and (11) p. 13)

This denial laid the foundation for the Solicitor General's argument of June 1971, MEMORANDUM FOR THE UNITED STATES IN OPPOSITION, in regards to your Petitioner's PETITION FOR WRIT OF CERTIORARI, No. 70-219 (formerly No. 1762, October Term, 1970) in which the Solicitor General states in full:

> On June 21, 1971, the Court denied Petitioner's application for a writ of mandamus to the United States Court of Appeals for the Fifth Circuit (No. 1667, this Term). The present petition raises essentially the same issues, and we rely upon our opposition to that application in urging that the Petition for a writ of certiorari should be denied.

This means that Petitioner lost his Appeal on Certiorari, October 12, 1971, as a direct and proximate result of clerical error. This means that, according to the Solicitor General, that certiorari should be denied because both the Trial Court Judge and the Court of Appeals had determined that the right to "compulsory process" is no longer available at any stage in any judicial

proceeding, that Petitioner's attempt to gain relief at the Supreme Court should be met directily by the immediately and permanent close-out of the Appeal.

Is a man, your Petitioner, to go to the penitentiary for three years - undergo a complete psychiatric examination and treatment - merely because he attempts to obtain that which the Constitution guarantees? Is a man to go to the penitentiary because a Clerk misplaces his Records and confuses his PETITION with that of another?

This gross injustice and horrible error can now be corrected if this Honorable Court will now direct the Court of Appeals to reinstate the Petitioner's Case in order that he may complete his Appeals Brief and perfect his Appeal.

Petitioner now states that at long last he has been able to assemble most of the necessary Documents for his proper defense and to complete his Brief. This collection of Documents has taken almost 18 months of diligent work and research, when the Government could have produced all the necessary Documents under subpoena in less than a week, if they had chosen to cooperate with your Petitioner. It is now possible for your Petitioner to complete his Appeals Brief as long as he is not prevented from consulting freely with his Counsel, Mr. Daly.

B - DENIAL OF RIGHTS BY MEANS OF IMPROPER COURT PROCESS.

The Court ORDER (see Appendix A-1 in PETITION FOR WRIT OF CERTIORARI, No. 70-219) provided in part:

> (3) Appellant is allowed thirty days from the date of this order within which to file his brief. The clerk is hereby directed that if appellant's brief is not filed within such time he shall forthwith enter an order dismissing the appeal.

The facts are these:

- This said ORDER is not dated in the body of the ORDER as in the normal fashion which states:

Done, this the ___th day of _____1971

- This said ORDER was stamped: Filed Mar 29 1971.

- This said ORDER was Sealed, Signed by the Clerk, and dated APR 1 1971.

In accordance with the Law, 28 U. S. Code Section 1691 (see p. 7) and Local Rule 1(c) of the Court of Appeals, 5th Circuit (see p. 8), April 1, 1971, is the time from which one is to start counting "30 days". (Petitioner did not receive this ORDER, by U. S. Mail until April 3, 1971).

Thirty days from April 1, 1971, is May 1, 1971. May 1st fell on a Saturday. Rule 26(a), F. R. A. P. states that when the last day falls on a Saturday, then, the period ends on the next day

which is not a " . . . Sunday or a legal holiday", that is, in this case, Monday, May 3, 1971.

Thus, the action taken by the Clerk, on Friday, April 30, 1971, to dismiss your Petitioner's Appeal was illegal, arbitrary and premature: The ENTRY OF DISMISSAL issued by this Clerk (see Appendix A-3 in PETITION FOR WRIT OF CERTIORARI) is void, and yet it has forced your Petitioner to seek relief by this said PETITION and now, by this Rehearing.

On Thursday, April 29, 1971, your Petitioner invoked the jurisdiction of this Court through his filing his PETITION FOR WRIT OF MANDAMUS, No. 1667, October Term. This PETITION was docketed in this Court within the 30 day period on May 3, 1971.

Is a man, your Petitioner, to go to the penitentiary for three years - undergo a complete psychiatric examination and treatment - merely because he attempts to obtain that which the Constitution guarantees? - The right to compulsory process for obtaining witnesses in one's favor? - The right to petition the Government for redress of grievances? Is a man to go to the penitentiary because a Clerk fails to draw up an Order properly and then, illegally, arbitrarily and prematurely dismisses his Appeal? Would this be Justice?

C - DENIAL OF THE RIGHT TO ENJOY ASSISTANCE OF COUNSEL

On September 23, 1970, your Petitioner wrote the following letter to the Clerk of the 5th Circuit Court of Appeals; asking for a generous time extension because he, the Petitioner, was being forced to proceed without counsel:

> Let this letter serve as my MOTION FOR AN EXTENSION OF TIME for filing my Brief. My attorney Mr. Hanes who recently submitted a Motion to Withdraw from the Case because of irreconcilable conflict between the Constitution and Court Rules has not yet returned all of the necessary papers for me to properly prepare my brief for submission to your Court. His advice and counsel is very valuable and I bitterly resent the fact that circumstances have made it impossible to continue with my Case through no fault of his or mine. This makes a difficult situation for me to properly protect my interests against the entire force of the Federal Government and its agents so I will need a generous time extension.
>
> Very truly yours,
>
> P.S. Please send me a copy of your Rules of Court Procedure and an exact definition ofthe authority upon which they are founded stemming from the U. S. Constitution. Please cite me the Law in its entirety which gives you the authority to enforce these Rules.

On October 6, 1970, your Petitioner again wrote the Clerk asking for information as follows:

> We have your letter dated October 1, 1970, in response to my request for a generous EXTENSION OF TIME because of hardships which your Rules of Court Procedure are placing on me in the preparation of my Brief. The Rules have already deprived me of my counsel and as you are well aware I have called them into question for this and other reasons. You will find enclosed a copy of my previous letter - dated 23 September 1970 - in which I re requested:
>
> 1. A copy of your Rules of Court Procedure.
>
> 2. A definition of the Constitutional foundation on which they stand.
>
> 3. Citation of the Statutory Law in its entirety which gives you the authority to enforce these Rules.
>
> Since your Office has issued a rather curt Notice informing me that my Appeal will be dismissed if I don't get my Brief finished in 15 days, it appears to me that you would at least grant me the courtesy of responding to this specific request for the information which I need to protect my interests. If it is your position that a citizen has no right to information please be kind enough to advise me so I can act accordingly.
>
> Please advise me how I can force the Government to give me Documents which were denied me before my Trial was held. The District Court refused to give them to me without offering any explanation whatso-

and, inspite of the fact that the U. S. Constitution guarantees "compulsory process".

For the Record, the limited time which has been proposed for an Extension in this matter is woefully inadequate for me to properly protect my rights in accordance with Due Process of Law under the Constitution. Is the end product of the Court System to be justice or efficiency, if there be a conflict?

We still do not have in our hands the Transcript of tape recordings which were placed in evidence at the Trial. How can we consider the significance of this evidence in our Appeal when we have neither the tapes nor the Transcript?

Your cooperation in this unusual and difficult set of circumstances is to be greatly appreciated. Kindly discuss the matter with one of the Judges and see if it is not possible to grant sufficient time so that I might have, at least, a fighting chance for a fair trial against the weight of the entire system which will be arrayed against me.

Yours, very truly,

To this letter, there was thunderous silence. The Clerk provided no answers to Petitioner's questions, but simply requested a financial statement, seemingly for the purpose of inducing your Petitioner to use a lawyer from the Court of Appeals panel who would be an agent of their Court and could be expected to carry out their commands even though he would purportedly be assisting the Appellant in his cause.

On December 12, 1970, your Petitioner asked the following questions of Clerk Wadsworth

in a letter about Counsel:

(1) What is the name of the judge who is demanding my financial status?

(2) Where is the copy of his Court Order demanding that I submit the information to you?

(3) What is the name of the judge demanding that I accept a lawyer appointed by your Court?

(4) On what authority is the demand based that I take one of your lawyers?

(5) Where is a copy of the Judge's Order demanding I take one your lawyers?

(6) Who instructed you to attempt to tamper with my free right of choice to counsel as guaranteed by Amendment VI., U. S. Constitution? What is their stated purpose?

(7) Who has authorized you to treat Case No's. 29120 and 30202 as though they were not entirely separate and independent Cases?

(8) Why have you failed to inform me of the receipt and disposition of my PETITION FOR WRIT OF MANDAMUS dated October 12, 1970, and PETITION FOR WRIT OF PROHIBITION dated October 12, 1970? Do you people understand that I need these documents to prepare my brief?

Clerk Wadsworth has never answered any single question, and has failed and refused to cooperate in any fashion on the subject.

See Petitioner's letter of December 18, 1970, directed to Clerk Wadsworth, to wit:

> I have your letter of December 11th, 1970 in hand. Since I posted a letter to you dated December 12th requesting information from you, it may not be possible to give you an answer to your satisfaction, but I will surely try.

Please reassure the Court that they need not be apprehensive that Justice will be delayed or impeded. The Constitution would not allow that. On the other hand, it would not be fair for Justice to be denied either by improper judgments or arbitrary haste.

As to the matter of counsel in my case, please refer to the letter and motion from my previous counsel, Arthur Hanes, Jr., concerning his withdrawal from my case because of the difficulty of representing a hard core Constitutional position such as mine in a Court system which is strongly inclined to favor procedures, rules and regulations, and by practice considers Constitutional issues last and "matters of law" first, as though the Constitution was not the prime law in America.

Inasmuch as a fearless patriot such as Mr. Hanes finds it impossible to represent me in view of this conflict of interest, I find it extremely unlikely that I would find somebodyelse who could represent me, who would be to your liking: so I will probably represent myself.

As matters stand I am working methodically to perfect my Appeal, but I still need the infromation requested in my PETITION FOR WRIT OF MANDAMUS to do so. Please see that Judge Johnson gets the information for me soon, so I can perfect my Appeal's Brief efficiently and expeditiously. There are some enormous Constitutional issues at stake.

So that you may understand my position, let me state here that I have not requested that your Court provide any law-

yer for me. Since I really don't want one of your lawyers, naturally it would be inappropriate for me to fill out your financial form.

If this answer is not entirely to your liking, I would surely appreciate hearing from you with specific citations.

Yours very truly,

Robert Brown

On January 19, 1971, your Petitioner submitted an Answer with Affidavit to the Government Motion to Dismiss. This action was taken by U.S. Attorney Ira deMent who never served Petitioner a copy, even though he certified he did, and, furthermoreClerk Wadsworth failed to notify your Petitioner of any Hearing. Petitioner's Answer and Affidavit is a part of the Appeals Court Record and which applies here as though set out in full.

This Answer shows that your Petitioner never got a single businesslike or satisfactory answer to any one of the many simple requests which Petitioner made to the Court of Appeals. No action was taken by the Court at the set time for Hearing - January 19, 1971 - on this Motion to Dismiss. A copy of the Docket picked up on that date, showed that your Petitioner's PETITIONS had not even been Docketed.

Then, a mysterious "fire of undetermined origin" broke out two days later - January 21st - and this "fire" then served as a reason for the continued refusal by the Court and Clerk to answer any questions from your Petitioner or for taking any action on any of your Petitioner's PETITIONS - until long last:

On March 3, 1971, Petitioner wrote the Clerk in part as follows:

. . .

These requests I have accepted and fulfilled in spite of the added expense and inconvenience to me. Now, it is my request you present me with Official proof that the Court did, indeed, ORDER these Documents. These Orders should be in accordance with law: that is, under the Seal of the Court and signed by the Clerk - 28 USC 1691. Unfortunately, I find that this request is necessary because my inquiries and questions are never answered and, my PETITIONS have never been Docketed and, my requests for Extensions of time to file my Brief have been ignored by your Office of the Court. It is apparent, now, that my File has never been kept in its complete form for the Court to see. Therefore,

LET THIS LETTER SERVE AS NOTICE THAT BEFORE any action is taken regarding Appellee's MOTION TO DISMISS that my File be entered in as evidence in my Cause. Therefore, please advise me how the Court would like to take care of this matter of seeing that my File is complete. I will take the time to make copies - in spite of the great incovenience (sic) it is to me BUT I CANNOT CONTINUE TO PAY THE COST FOR THESE COPIES nor should I have to, under the circumstances.

Sincerely yours,

Robert Muncaster

On March 15, 1971, Petitioner wrote Judge Brown as follows in part:

. . .

This response by the Clerk also ignored both Robert Muncaster's and Charles Mun-

caster's Notice - in their letter - that each was requesting that his File be completed including all letters so that it could be presented to the Court in full as witness in the hearings to Dismiss the Appeal . . .

This attitude of ignoring letters or vital parts of letters on the part of the Clerk's Office, resulted in our having to have Charles Muncaster drive to New Orleans to personally submit his and his father's Response to the Motion to Dismiss . . . (filed by the U. S. Attorney) lest the copies sent by U. S. Mail failed to arrive or be docketed. This was in January - on the 19th day.

Finally, months after your Petitioner's requests for information commenced - in letter and PETITION form - the Court of Appeals issued an ORDER denying everything requested and demanded submission of Petitioner's Brief WITH or WITHOUT the Information he needed and, NOT SUBJECT TO APPEAL OR REVIEW IN ANY HIGHER COURT. The same ORDER - without any date in the body - demanded the Brief be submitted in 30 days - without argument (see Petitioner's PETITION FOR WRIT OF CERTIORARI, p. A-1)

Here is the critical question:

Would a member of the Bar Association have been treated in the same high handed and arrogant fashion as your Petitioner was treated? Would an A. B. A. lawyer have been denied an answer to every single letter he wrote and an answer to every single question he asked? Would a member of the Bar of the Court of Appeals find that his Petitions entered would not be Docketed?

Petitioner clearly suffered indignity and injustice at every stage of the proceedings which led to the termination of his Appeal - arbitrarily and without cause when Petitioner had appealed in good faith to this Court for relief on MANDAMUS - for the information he honestly felt was needed for his brief.

Did not the Court of Appeals face the Petitioner with a Hobson's Choice: - damned if you do, damned if you don't - merely because Petitioner realized once Lawyer Hanes left the Case that any of the Courts "approved" lawyers would not fight for Defendant's Constitutional position with full skill, zeal and ardor because they had an unspoken obligation to the "law profession", to the "Court" and to the "Rules" which prevented them from doing so?

Was not your Petitioner discriminated against because he had no counsel at the time? Was not your Petitioner discriminated against because Mr. Jerome Daly was his first choice of counsel - when his choice was denied in the Court of first instance and never allowed to represent him since? Was not your Petitioner denied justice and due process of law because he rejected the good offices of the Establishment to accept an "officer of the Court" as his lawyer?

The members of the Bar are actually called Officers or Agents of the Court. They take part in a legislative function under the guise of promulgating Rules for the governing of the procedural aspect of Criminal Proceedings which are given the force and effect of Law passed pursuant to the Constitution of the United States. See Evans v Newton, 86 S. Ct. 486 (1966); Terry v Adams,

345 US 461, 73 S. Ct. 809, 97 LEd 1152 where it is quoted:

> When private individuals or groups are endowed by the State with Powers or functions governmental in nature they become agencies or instrumentalities of the State and subject to its Constitutional limitations.

This adds up to only one thing. All licensed lawyers come under the category of Officers and Agents of the State.

On May 3rd, 1971, at Petitioner's home in Montgomery, Alabama. Petitioner's friend, advisor, and counsel Jerome Daly spoke to Mr. R. E. Windhorst Jr. of the Court of Appeals about the reinstatement of your Petitioner's Case after Petitioner received a copy of the ENTRY OF DISMISSAL of April 30th (see p. A-3, PETITION for Certiorari). Mr. Windhorst advised Mr. Daly that reinstatement was not unusual or difficult - all that was necessary was a routine Motion to the Court.

A routine Motion was submitted by your Petitioner (see p. A-4, PETITION for certiorari) and the Court of Appeals DENIED it (see p. A-6 PETITION).

This leaves the critical question:

WHY WAS PETITIONER DENIED THE RIGHT TO CONTINUE WITH HIS APPEAL? Why was he denied reinstatement of his Case with time to submit the Brief?

The answer is conclusive: Because Peti-

tioner did not enjoy the unqualified right to counsel at any stage of the proceedings.

The above set out intervening facts and circumstance and substantial issues not previously presented justify a rehearing and reconsideration of this Case.

Petitioner is entitled to a reconsideration of his PETITION and a rehearing on it.

Petitoner's Appeal Petition was arbitrarily denied in the Court of Appeals. His Appeal was arbitrarily dismissed. His Motion to have the Appeal re-instated was arbitrarily denied without good reason.

VII.
CONCLUSION & RELIEF REQUESTED

Your Petitioner states that he has been deprived of the right of Appeal by the arbitrary actions of the U. S. Court of Appeals for the Fifth Circuit for dismissing his Appeal prematurely.

Your Petitioner further states that said Appeal was dismissed arbitrarily and without any hearing and that the dismissal of his Appeal and the Denial of Petitioner's MOTION to grant Reinstatement of his Appeal were in violation of Due Process of Law.

WHEREFORE your Petitioner prays:

(1) That this Honorable Court will set aside it's ORDER of October 12, 1971, in this Case denying Certiorari; and,

(2) That a writ of Certiorari will be issued by this Court directed to the Respondent Court of Appeals for the Fifth Circuit certified, demanding that said Court certify and send to this Court a complete transcript of the Record and all proceedings of the said Court of Appeals and the transcript and the proceedings - including ALL of the Exhibits - filed in the U. S. District Court for the Middle District of Alabama to the end that said Case can be determined and reviewed by this Honorable Court as provided by law and to the end that the ORDER dismissing your Petitioner's Appeal be reversed and that the Appeal be directed to be reinstated and heard by the U.S. Court of Appeals for the Fifth Circuit, and, further that this Honorable Court may grant your Petitioner any other such relief as may seem appropriate; and,

(3) This Honorable Court will issue an Order summarily reversing the Orders of the Fifth Circuit Court of Appeals and Order the said Court of Appeals to reinstate Petitioner's Case upon the Calendar and hear Petitioner's Appeal, allowing Petitioner 30 days from the date of receipt of Notice of Reinstatement to prepare and submit his Brief in the said Court of Appeals, and argue the Issues in open Court for Court Opinion, Local Rules 17, 18, 20 and 21 to the contrary notwithstanding, or,

In the alternative, assign the Case to another Circuit Court of Appeals more desirous of hearing Petitioner's Case including the Constitional Issues involved, and,

(4) Your Petitioner further prays that an Order will issue from this Honorable Court to the Court of Appeals to set a date for a full hearing

on the issue of Petitioner's unqualified right to assistance of Counsel as guaranteed by Amendments I., V., VI., IX., and X. of the U. S. Constitution, permitting Mr. Daly to appear and speak and assist your Petitioner in the exercise of his Constitutional Rights in that Court; and,

(5) Grant any other appropriate relief.

RESPECTFULLY SUBMITTED:

ROBERT GEORGE MUNCASTER,
Petitioner.
1158 South Perry Street,
Montgomery , Alabama 36104
205/ 265 - 7349

Robert George Muncaster having first been duly sworn states that he has read the foregoing Petition and knows the contents thereof and the same is true to the best of his information, knowledge, and belief.

Subscribed and sworn to before me this ___ day of November, 1971

_____
Robert George Muncaster

_____
Martha B. King,
Notary Public
My commission expires
June 22, 1975

November 5, 1971

State of Alabama

ss

County of Montgomery

Jerome Daly, having been first duly sworn deposes and states that he is Counsel for Robert G. Muncaster, having been appointed by written Power of Attorney directly from Robert G. Muncaster.

That this Petition is presented pursuant to and in support of the First Amendment to the Constitution of the United States in good faith and not for delay. Petition is restricted to the grounds specified in Rule 33 and Rule 58.

Jerome Daly

Jerome Daly, Of Counsel
for Robert G. Muncaster
Box 1676 Twin City Airport
Minnesota 55111

Subscribed and sworn to before me this
November 6, 1971

Martha B. King

my commission expires 6/22/75